

## Internal Revenue Service

## Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-122575-02

Date:

September 16, 2002

### LEGEND:

Taxpayer =

Decedent =

Will =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Trust =

Probate Court

Corporate  
Trustee =

\$x =

Dear :

This is in response to your letter dated April 15, 2002, requesting a ruling regarding the generation-skipping transfer (GST) tax consequences of a court ordered modification of a trust.

PLR-122575-02

The facts submitted and representations made are as follows. Decedent executed her Will on Date 1, and executed a codicil to the Will on Date 2. Decedent died on Date 3, survived by her husband and three daughters.

Under Article Five, Section 5.1(a) of Will, Trust was created for the benefit of her daughter, Taxpayer. Trust shall receive one-third of \$x.

Article Eight, Section 8.1, provides, in part, that the bequest made in Article Five, Section 5.1 to Taxpayer shall be held in Trust for the benefit of Taxpayer.

Article Eight, Section 8.2, provides that the trustee shall distribute to Taxpayer and her descendants such amounts of income and principal of Trust as are necessary, when added to the funds reasonably available to them from all other sources known to the trustee, to provide for the health, support, maintenance, and education of each such distributee in order to maintain such distributees, to the extent reasonably possible, in accordance with the standard of living to which they are accustomed to at the time of Decedent's death. In addition, Corporate Trustee, in its discretion, may distribute to each daughter of Decedent and their descendants all or part any part of the income of trust of which they are beneficiaries that is not required to be distributed under other provisions, without regard to any standard or other sources of support.

Article Eight, Section 8.4, provides that Trust shall continue for Taxpayer's lifetime and shall terminate upon her death.

Article Eight, Section 8.5, provides that upon the termination of Trust, all of the remaining unappointed property of Trust shall be divided among the then living descendants of Taxpayer, per stirpes, or if no such descendant is then living, then among the then living descendants of Decedent, per stirpes.

Trust was irrevocable as of the date of Decedent's death on Date 3, which was before September 25, 1985.

Taxpayer submitted an "Application for Modification of Trust and Appointment of Successor Trustee" to Probate Court on Date 4.

On Date 5, Probate Court issued an "Order Approving Application for Modification of Trust and Appointment of Successor Trustee" (Order), subject to Taxpayer's receipt of a favorable ruling from the Internal Revenue Service. Pursuant to the Order, the following language will be added to the end of Section 8.2 of Article Eight of Decedent's Will:

PLR-122575-02

In addition, with regard to the Trust created by this Article for my daughter, Taxpayer:

1. My corporate trustee shall pay the "Distribution Amount" (as hereinafter defined) to or for the benefit of said daughter during her lifetime with payments being made in installments no less frequently than quarterly.
2. The Distribution Amount shall be an annual amount equal to five percent (5%) of the fair market value of her Trust as of the close of the last business day of the preceding tax year of the trust.
3. For a short tax year, the Distribution amount shall be based upon a prorated portion of the Distribution Amount set forth above, comparing the number of days in the calendar year of which the short tax is a part.
4. The amounts distributed from this Trust shall first be paid from net accounting income, next from net realized short-term gains, next from net realized long-term capital gains, and finally from the principal of the Trust. Any capital gains actually distributed as part of the Distribution Amount or as a discretionary distribution shall be credited to the recipient of the distribution on the books of the Trust.

It has been represented that no additions, actual or constructive, have been made to Trust.

The trustee of Trust has requested a ruling that the modification of Trust pursuant to Probate Court's Order will not subject Trust to the generation-skipping transfer (GST) tax.

Section 2601 imposes a tax on each generation-skipping transfer made by a transfer to a skip person.

Under § 1433(a) of the Tax Reform Act of 1986, the generation-skipping transfer tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Tax Reform Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to a transfer from a trust, if the trust was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date. Under § 26.2601-1(b)(1)(ii), any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor had a power that would have caused inclusion of the trust in his or her gross estate under § 2038 or § 2042, if the settlor had died on September 25, 1985. In this case, Trust is considered to be irrevocable on September 25, 1985, because neither § 2038 nor § 2042 apply.

PLR-122575-02

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax will not cause the trust to lose its exempt status. The regulation provides that the rules contained in the paragraph are applicable only for purposes of determining whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer.

Currently, Under Article Eight, Section 8.2, the corporate trustee, in its discretion, may distribute to Taxpayer all or any part of the income of Trust, without regard to any standard or other sources of support. The corporate trustee is not currently required to make any distributions to Taxpayer. Pursuant to Probate Court's Order, the corporate trustee will be required to pay the "Distribution Amount" to or for the benefit of Taxpayer. In addition, the corporate trustee will retain the discretion to distribute all or any part of the income of Trust to Taxpayer. Under these circumstances, the modification of Trust pursuant to the order will not result in a shift of any beneficial interest in the trust to any beneficiary who occupies a generation lower than the persons holding the beneficial interests prior to the date the order becomes effective. Further, the modification of Trust pursuant to the order will not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

Accordingly, based on the facts submitted and the representations made, we rule that the modification of Trust pursuant to Probate Court's Order will not subject Trust to the generation-skipping transfer (GST) tax.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the modification under the cited provisions or under any other provisions of the Code. Specifically, we express no opinion on the federal income and gift tax consequences of the modification.

PLR-122575-02

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

James F. Hogan

James F. Hogan  
Senior Technician Reviewer, Branch 9  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes  
Copy of this letter